IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.17307 of 2003

P.Shanmugam .. Petitioner

Vs.

1.The Commandant,
Central Industrial Security Force Unit,
NLC., Neyveli.

2.The Deputy Inspector General(SZ),
Central Industrial Security Force,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

3.The Inspector General SWS,
Central Industrial Security Force,
RCF Complex, Sembur,
Mumbai-400 074.

4.The Director General,
Central Industrial Security Force(HQRS),
No.13, CGO's Complex,
Lodhi Road, New Delhi. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order passed by the third respondent in his order No.V-11014/07/SZ/LC/SWS/2002/4223 dated 03.06.2002 confirming the order passed by the second respondent in his appellate order No.V-11014/85/2001/L&R(SZ)/8645 dated 29.11.2001 confirming the final order passed by the first respondent in his order No.V-15014/CISF/NLC/MAJ.04/P.S./2001/7568 dated 23.07.2001, quash the same and to direct the respondents to take the petitioner into the strength of CISF as cook with all monetary benefits.

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For Petitioner : Mr.M.Md.Ibrahim Ali
For Respondents : Mr.A.Arumugam, SCGSC.,

ORDER

(Order of the Court was delivered by P. SATHASIVAM, J.)

The petitioner challenges the orders of the respondents dated 23.07.2001, 29.11.2001 and 03.06.2002 on various grounds. While he was serving as a Cook of Central Industrial Security Force, Neyveli Lignite Corporation, Neyveli, he was issued with charge memorandum under Rule 34 of CISF Rules 1969. The charges are as follows:

Article-I.

"No.943250030 Cook P.Shanmugam of CISF Unit, NLC Neyveli is charged with gross indiscipline, misconduct and neglect of duty in that he reportedly absented from duty and duty station, with effect from 01.03.2001 (FN) without any permission from the competent authority. He is remaining absent without leave till date. Absenting from duty and duty station without permission from the competent authority, on the part of Cook P.Shanmugam amounts to gross indispline, misconduct and neglect of duty.

Article-II

No.943250030 Cook P.Shanmugam of CISF Unit, NLC Neyveli is charged with being habitual offender of AWL and other misconducts. He has failed to improve his conduct and habit, inspite of being awarded with 09 punishments in his CISF service career of seven years."

2. Pursuant to the same, an enquiry was conducted. Since the petitioner did not participate in the enquiry, ex-parte enquiry was conducted and the Enquiry Officer submitted his report holding that the charges were proved. The Disciplinary Authority, considering the report of the Enquiry Officer and finding that he is a habitual absentee, has awarded a penalty of removal from service. Questioning the order of removal, the petitioner preferred an appeal and the same was rejected by the Appellate Authority. The revision filed by him was also dismissed by the Revisional Authority. Hence, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner has submitted that though the petitioner was permitted to rejoin duty, action was taken by the authority for his absence. He also submitted that the respondents ought to have accepted the medical certificate produced by the petitioner to substantiate his illness, which was issued by a private Medical practitioner. We have verified the two charges levelled against the petitioner, the enquiry

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proceedings as well as the orders of all the authorities. Though the petitioner was absented from 01.03.2001 to 25.05.2001 without any specific authorisation or permission, the fact remains that he was permitted to join duty on 25.05.2001. Thereafter, charge memorandum was served to him. Though he was given an opportunity to participate in the enquiry, for the reasons best known to him, admittedly he did not participate in the enquiry and avail the said opportunity. Equally it is true that regarding his illness, the petitioner has not produced any acceptable documentary evidence from the approved/Government Hospital. In such circumstances, we are in agreement with the conclusion arrived at by all the authorities.

4. Learned counsel for the petitioner further submitted that considering the nature of work being performed by the petitioner and even the earlier punishments are not serious, the penalty of removal from service is disproportionate to prove charges.

5. Learned counsel appearing for the respondents, by drawing our attention to the details furnished in their counter affidavit, has submitted that in a short period of eight years, the petitioner was awarded nine penalties and in paragraph 15 of the counter affidavit, those details have been furnished.

6. It is true that he suffered with nine penalties. However, except on two occasions, the petitioner was imposed fine of one day pay, two days pay and five days pay. Considering the fact that at the relevant time he was working as Cook and also taking note of the fact that the details regarding earlier punishments (nine penalties) were not specifically put on notice to the petitioner (except in the counter affidavit before this Court) and the defence taken by him, we are of the view that the punishment of removal is disproportionate to the proved charges. As stated earlier, considering the nature of assignment viz., Cook and the complaints regarding his health, we are of the view that ends of justice would be met by awarding any other appropriate punishments other than the removal from service. On this ground, while confirming the conclusion of all the Authorities, we remit the matter to the first respondent-Commandant, Central Industrial Security Force Unit, NLC., Neyveli, for passing fresh order only with regard to quantum of punishment as observed above.

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7. The writ petition is allowed to the extent mentioned above. No costs.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

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NLC., Neyveli.

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Lodhi Road, New Delhi.

+ one cc to Mr. A. Arumugam, ACGSC, SR NO. 60565

SMV(CO)
NM(20.12.2006)

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